

SERVICE DATE – APRIL 13, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42134

NATIONAL RAILROAD PASSENGER CORPORATION—SECTION 213 INVESTIGATION  
OF SUBSTANDARD PERFORMANCE ON RAIL LINES OF CANADIAN NATIONAL  
RAILWAY COMPANY

Digest:<sup>1</sup> This decision dismisses without prejudice the National Railroad Passenger Corporation's complaint requesting that the Board initiate an investigation of alleged substandard performance of the Illini/Saluki service on the lines of Canadian National Railway Company, between Chicago and Carbondale, Ill.

Decided: April 12, 2018

By complaint filed on January 19, 2012, as amended on December 19, 2014, the National Railroad Passenger Corporation (Amtrak) requested that the Board initiate an investigation pursuant to 49 U.S.C. § 24308(f) of alleged substandard performance of Amtrak's Illini/Saluki service between Chicago and Carbondale, Ill. Amtrak alleges in its amended complaint that the on-time performance of the Illini/Saluki service, which operates over tracks owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railway Company and Illinois Central Railroad Company (collectively, CN), has averaged less than 80% for more than two consecutive calendar quarters.

In December 2015, the matter was held in abeyance in light of a rulemaking proceeding in Docket No. EP 726 to define on-time performance for purposes of section 213 of the Passenger Rail Investment & Improvement Act (PRIIA), Pub. L. No. 110-432, Div. B, 122 Stat. 4907 (2008), which governs Board investigations of on-time performance. See On-Time Performance Under Section 213 of the Passenger Rail Inv. & Improvement Act of 2008, EP 726 (STB served May 15, 2015). The Board's final rules were ultimately vacated by the U.S. Court of Appeals for the Eighth Circuit. See Union Pac. R.R. v. STB, 863 F.3d 816, 825-26 (8th Cir. 2017). The U.S. Supreme Court recently denied petitions for certiorari. See Nat'l R.R.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Passenger Corp. v. Union Pac. R.R., No. 17-699, slip op. at 1 (U.S. Feb. 20, 2018); Nat'l Ass'n of R.R. Passengers v. Union Pac. R.R., No. 17-714, slip op. at 1 (U.S. Feb. 20, 2018).<sup>2</sup>

On March 29, 2018, CN filed an unopposed motion to dismiss the amended complaint and terminate this proceeding.<sup>3</sup> The Board will grant CN's motion to dismiss without prejudice.

It is ordered:

1. CN's unopposed motion to dismiss is granted. Amtrak's complaint is dismissed without prejudice to any right Amtrak may have to refile its complaint in the future.

2. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.

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<sup>2</sup> CN had previously filed a motion to dismiss focusing on the fact that the metrics and standards developed pursuant to section 207 of PRIIA had been invalidated in court, which the Board denied. Nat'l R.R. Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Can. Nat'l Ry., NOR 42134 (STB served Dec. 19, 2014) (with Board Member Begeman dissenting). The most recent court decision invalidating the section 207 metrics and standards is now on appeal. See Ass'n of Am. R.R.s v. Dep't of Transp., No. 17-5123 (D.C. Cir. argued Feb. 22, 2018).

<sup>3</sup> CN's motion states, in part, that "Amtrak has authorized counsel to report that Amtrak does not oppose CN's request for dismissal of this proceeding."